

32B County Club Drive  
New Smyrna Beach, FL 32168  
904-424-6923  
March 1, 2001

Dear Sirs:

I am writing in reference to Raymond Barrera's Misdemeanor Conviction in 1963 for statutory rape with the intention of avowing that what happened between us was consensual. In 1993, I wrote to Sing Sing Prison in New York verifying the same. I wrote another in January of this year to Coleman Federal Facility in Florida with a copy to Kew Gardens Criminal Court in New York asking that the records from this misdemeanor be sealed. Although I was told that "A" Misdemeanors could not be sealed.

In 1963, Raymond and I were in love and wished to be married. I was 16 ½ years old and Raymond was 18. In the 1960's, things were very different for 2 young people in love and society was very judgemental and could often be quite cruel. Since I was pregnant and owing to the prejudices of that era against interracial relationships and sex before marriage, my parents felt that my reputation had been destroyed and felt impelled to press charges against Raymond. The sentence for this misdemeanor was suspended and Raymond did not serve time. Sadly, because of the lack of support from my family, I decided to place our child up for adoption.

Two years later, Raymond and I were married and remained so until only 2 years ago. We had 2 more children together, Joseph and Gina. We also have 2 beautiful grandchildren. Although Raymond is now in Coleman Federal Facility in Florida, we continue to communicate with each other and remain loving friends.

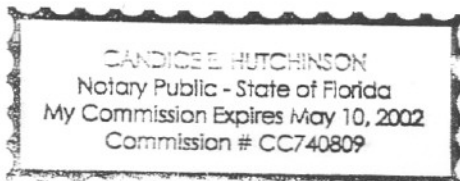
This charge is now making it difficult for Raymond to be involved in a work program that could help him. It continues to cause a great deal of anxiety 38 years later for both sides of our family. There have been many repercussions due to this charge pressed by my parents. I attest herein that Raymond in no way forced himself on me nor did he unduly influence me in my decision to have sex with him. Nor do I believe that he would do so with any woman. He was 18 years old and in love. He proved his love when I became of legal age to marry without my parents consent and made me his wife.

Please allow Raymond an opportunity to join the work program. I would appreciate a response to this letter and, if more information is needed, please feel free to contact me.

Sincerely,

*Barbara M. Lupi*

Barbara M. Lupi  
formerly Barbara M. Barrera



Sworn and Subscribed Before me  
This 5 Day of March, 192001 By  
Barbara M. Lupi Who is  
Personally Known or Produced  
Barbara M. Lupi as Identification.  
Florida Drive License Candice E. Hutchinson

STATE OF FLORIDA  
COUNTY OF VOLUSIA

NOTARY PUBLIC

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

JOSE BARRERA,	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 05-40107-RWZ
	)	
DAVID WINN, et al.,	)	
Defendants	)	
	)	

MEMORANDUM OF AMICUS CURIAE

The defendants have moved to dismiss the pending complaint as moot, asserting that since the Bureau of Prisons ("BOP") waived Mr. Barrera's Public Safety Factor classification and approved his transfer to the FCI in Fort Dix, New Jersey, it has afforded him the relief he sought.

Amicus agrees that, as to the pending complaint, the relief sought has been afforded. However, Mr. Barrera has moved for leave to amend his complaint to challenge the notification provisions of 18 U.S.C. §4042( c). Rule 15 of the Federal Rules of Civil Procedure provides that leave "shall be freely given when justice so requires". Mr. Barrera has stated that, at the time he filed his complaint, he did not realize that the BOP would be notifying law enforcement officials that he was a sex offender based on his 40 year old state conviction.

Amicus suggests that leave to amend should be granted in this case to enable this Court to address the merits of whether the BOP's interpretation of the scope of 18 U.S.C. §4042( c) is correct, given the ramifications of required reporting an individual as a sex offender. This case presents a particularly stark example of the impact of the BOP interpretation. Mr. Barrera's

conviction for rape in 1983 resulted in a six month suspended sentence. As set out in a letter from his ex-wife, the charges were based on consensual sex they engaged in when she was a minor; the charges were pressed by her parents; and she and Mr. Barrera married when she was able to do so without parental consent. They remained married for more than 35 years. A copy of that letter is appended to this memorandum and marked "A". Yet, based on this conviction, the BOP classified Mr. Barrera as a sex offender.

While the BOP has waived that classification for purposes of his transfer to Fort Dix, it has not represented that the classification was improper or that it will not notify law enforcement authorities of his sex offender status when he is released.. Accordingly, amicus suggests that leave to amend be granted. If the amendment to the complaint is accepted, amicus requests leave to submit a memorandum addressing the validity of the BOP interpretation of 18 U.S.C. §4042( c).

Respectfully submitted,

/s/ Judith H. Mizner

Judith H. Mizner  
Assistant Federal Public Defender  
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408 Atlantic Ave.  
Boston, MA 02110  
(617) 223-8061

Dated: September 6, 2005

**CERTIFICATE OF SERVICE**

I, Judith H. Mizner, hereby certify that I have served this Notice by mailing a copy thereof to the following: Mr. Jose R. Barrera, Reg. No. 57833-053, FMC Devens, P.O. Box 879, Ayer, MA 01432; Mr. David Winn, Warden, FMC Devens, P.O. Box 880, Ayer, MA 01432; Mr. Harley Lappin, Director BOP, 320 N.W. First Street, Washington, D.C. 20534; and by delivering a copy thereof to Damien Wilmot, Esq., Office of the United States Attorney for the District of Massachusetts, U.S. Moakley Courthouse, 1 Courthouse Way, Boston, MA 02210.

/s/Judith H. Mizner  
Judith H. Mizner

**FEDERAL DEFENDER OFFICE**

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BOSTON, MASSACHUSETTS, 02110  
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**fax**  
**TRANSMITTAL**

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**To: Jay Johnson**

**From: Judith Mizner**

**Fax #: (617) 7489096**

**Subject: Barrera memorandum (without attachment)**

**Date: 1-06-06**

**Pages: 4 (includes cover)**

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